

AMENDED IN SENATE JULY 2, 1996
AMENDED IN ASSEMBLY APRIL 11, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2053

Introduced by Assembly Member Kevin Murray

January 11, 1996

An act to amend Section 7471 of the Government Code, and to amend Sections 186.9, 186.10, 14165, and 14167 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2053, as amended, K. Murray. Crimes: money laundering: financial institutions.

(1) Existing law provides that any person who conducts or attempts to conduct a transaction within a 24-hour period involving monetary instruments of a total value exceeding \$5,000 through a financial institution for specified criminal purposes, or knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of "money laundering."

This bill instead would provide that the crime of money laundering is committed when the prohibited transactions are conducted within a 30-day period rather than a 24-hour period. The bill would specify that this 30-day aggregation period does not create an obligation for financial institutions to record, report, create, or implement tracking systems, or

otherwise monitor transactions involving monetary instruments in any 30-day time period or other time period. The bill would provide that a financial institution for the purposes of these provisions includes any person or business regularly engaged in the delivery, transmittal, or holding of mail or packages, or any person or business that conducts a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft. The bill would also revise the definition of monetary instrument, as specified. This bill would impose a state-mandated local program by increasing the scope of an existing crime.

(2) Existing law requires specified financial institutions to make and keep a record of, and file a report with the Department of Justice regarding, each transaction by, through, or to, the financial institution that involves currency of more than \$10,000, and makes a violation of these provisions a crime.

Existing law further provides that the Department of Justice shall destroy a report filed with it at the end of the 5th calendar year after receipt of the report, unless the report or information contained in the report is known by the Department of Justice to be the subject of an existing criminal proceeding or the Department of Justice has received subsequent reports concerning the person or persons involved in the reported transaction, and shall destroy a report filed with it at the end of the 10th calendar year, unless the report or information contained in the report is the subject of existing criminal proceedings.

This bill would provide instead that the Department of Justice shall destroy a report filed with it at the end of the 5th calendar year after receipt of the report, unless the report or information contained in the report is known by the Department of Justice to be the subject of an existing criminal proceeding or investigation.

(3) Existing law provides that specified provisions prohibiting disclosure of financial records by financial institutions, prohibiting money laundering, and requiring the maintenance of records and the filing of reports on monetary instrument transactions shall be repealed on January 1, 1997.



This bill would delete the repeal provisions in these laws. Because this bill would extend the operation date of these laws indefinitely, this bill would impose a state-mandated local program.

(4) *Existing law, known as “the three strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. The initiative statutes provide that any amendment of these provisions requires a 2/3 vote of the membership of each house of the Legislature.*

This bill would provide that a felony conviction under the provisions in (1) above shall not constitute a current felony conviction for purposes of sentencing under the “three strikes” provisions of those initiative statutes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a 2/3 vote.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~ 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7471 of the Government Code is
2 amended to read:
3 7471. (a) Except in accordance with requirements of
4 Title 11 (commencing with Section 14160) of Part 4 of the
5 Penal Code or Section 7473, 7474, 7475, or 7476 of this
6 code, no financial institution, or any director, officer,
7 employee, or agent of a financial institution, may provide
8 or authorize another to provide to an officer, employee,
9 or agent of a state or local agency or department thereof,
10 any financial records, copies thereof, or the information
11 contained therein, if the director, officer, employee, or
12 agent of the financial institution knows or has reasonable

1 cause to believe that the financial records or information
2 are being requested in connection with a civil or criminal
3 investigation of the customer, whether or not an
4 investigation is being conducted pursuant to formal
5 judicial or administrative proceedings.

6 (b) This section is not intended to prohibit disclosure
7 of the financial records of a customer or the information
8 contained therein incidental to a transaction in the
9 normal course of business of a financial institution if the
10 director, officer, employee, or agent thereof making or
11 authorizing the disclosure has no reasonable cause to
12 believe that the financial records or the information
13 contained in the financial records so disclosed will be used
14 by a state or local agency or department thereof in
15 connection with an investigation of the customer,
16 whether or not an investigation is being conducted
17 pursuant to formal judicial or administrative proceedings.

18 (c) This section shall not preclude a financial
19 institution, in its discretion, from initiating contact with,
20 and thereafter communicating with and disclosing
21 customer financial records to, appropriate state or local
22 agencies concerning suspected violation of any law.

23 (d) A financial institution which refuses to disclose the
24 financial records of a customer, copies thereof or the
25 information contained therein, in reliance in good faith
26 upon the prohibitions of subdivision (a) shall not be liable
27 to its customer, to a state or local agency, or to any other
28 person for any loss or damage caused in whole or in part
29 by the refusal.

30 SEC. 2. Section 186.9 of the Penal Code is amended to
31 read:

32 186.9. As used in this chapter:

33 (a) "Conducts" includes, but is not limited to,
34 initiating, concluding, or participating in conducting,
35 initiating, or concluding a transaction.

36 (b) "Financial institution" means, when located or
37 doing business in this state, any national bank or banking
38 association, state bank or banking association,
39 commercial bank or trust company organized under the
40 laws of the United States or any state, any private bank,

1 industrial savings bank, savings bank or thrift institution,
2 savings and loan association, or building and loan
3 association organized under the laws of the United States
4 or any state, any insured institution as defined in Section
5 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)),
6 any credit union organized under the laws of the United
7 States or any state, any national banking association or
8 corporation acting under Chapter 6 (commencing with
9 Section 601) of Title 12 of the United States Code, any
10 agency, agent or branch of a foreign bank, any currency
11 dealer or exchange, any person or business engaged
12 primarily in the cashing of checks, any person or business
13 who regularly engages in the issuing, selling, or
14 redeeming of traveler's checks, money orders, or similar
15 instruments, any broker or dealer in securities registered
16 or required to be registered with the Securities and
17 Exchange Commission under the Securities Exchange
18 Act of 1934 or with the Commissioner of Corporations
19 under Part 3 (commencing with Section 25200) of
20 Division 1 of Title 4 of the Corporations Code, any
21 licensed transmitter of funds or other person or business
22 regularly engaged in transmitting funds to a foreign
23 nation for others, any investment banker or investment
24 company, any insurer, any dealer in gold, silver, or
25 platinum bullion or coins, diamonds, emeralds, rubies, or
26 sapphires, any pawnbroker, any telegraph company, any
27 person or business regularly engaged in the delivery,
28 transmittal, or holding of mail or packages, any person or
29 business that conducts a transaction involving the
30 transfer of title to any real property, vehicle, vessel, or
31 aircraft, any personal property broker, any person or
32 business acting as a real property securities dealer within
33 the meaning of Section 10237 of the Business and
34 Professions Code, whether licensed to do so or not, any
35 person or business acting within the meaning and scope
36 of subdivisions (d) and (e) of Section 10131 and Section
37 10131.1 of the Business and Professions Code, whether
38 licensed to do so or not, any person or business regularly
39 engaged in gaming within the meaning and scope of
40 Section 330, any person or business regularly engaged in

1 pool selling or bookmaking within the meaning and scope
2 of Section 337a, any person or business regularly engaged
3 in horseracing whether licensed to do so or not under the
4 Business and Professions Code, any person or business
5 engaged in the operation of a gambling ship within the
6 meaning and scope of Section 11317, any person or
7 business engaged in legal gambling or gaming within the
8 meaning and scope of subdivisions (a) and (b) of Section
9 19802 of the Business and Professions Code, whether
10 registered to do so or not, and any person or business
11 defined as a “bank,” “financial agency,” or “financial
12 institution” by Section 5312 of Title 31 of the United States
13 Code or Section 103.11 of Title 31 of the Code of Federal
14 Regulations and any successor provisions thereto.

15 (c) “Transaction” includes the deposit, withdrawal,
16 transfer, bailment, loan, pledge, payment, or exchange of
17 currency, or a monetary instrument, as defined by
18 subdivision (d), or the electronic, wire, magnetic, or
19 manual transfer of funds between accounts by, through,
20 or to, a financial institution as defined by subdivision (b).

21 (d) “Monetary instrument” means United States
22 currency and coin; the currency, coin, and foreign bank
23 drafts of any foreign country; payment warrants issued by
24 the United States, this state, or any city, county, or city
25 and county of this state or any other political subdivision
26 thereof; any bank check, cashier’s check, traveler’s check,
27 or money order; any personal check, stock, investment
28 security, or negotiable instrument in bearer form or
29 otherwise in such form that title thereto passes upon
30 delivery; gold, silver, or platinum bullion or coins; and
31 diamonds, emeralds, rubies, or sapphires. Except for
32 foreign bank drafts and federal, state, county, or city
33 warrants, “monetary instrument” does not include
34 personal checks made payable to the order of a named
35 party which have not been endorsed or which bear
36 restrictive endorsements, and also does not include
37 personal checks which have been endorsed by the named
38 party and deposited by the named party into the named
39 party’s account with a financial institution.



1 (e) “Criminal activity” means a criminal offense
2 punishable under the laws of this state by death or
3 imprisonment in the state prison or from a criminal
4 offense committed in another jurisdiction punishable
5 under the laws of that jurisdiction by death or
6 imprisonment for a term exceeding one year.

7 (f) “Foreign bank draft” means a bank draft or check
8 issued or made out by a foreign bank, savings and loan,
9 casa de cambio, credit union, currency dealer or
10 exchanger, check cashing business, money transmitter,
11 insurance company, investment or private bank, or any
12 other foreign financial institution that provides similar
13 financial services, on an account in the name of the
14 foreign bank or foreign financial institution held at a bank
15 or other financial institution located in the United States
16 or a territory of the United States.

17 SEC. 3. Section 186.10 of the Penal Code is amended
18 to read:

19 186.10. (a) Any person who conducts or attempts to
20 conduct a transaction or more than one transaction
21 within a 30-day period involving a monetary instrument
22 or instruments of a total value exceeding five thousand
23 dollars (\$5,000) through one or more financial institutions
24 (1) with the intent to promote, manage, establish, carry
25 on, or facilitate the promotion, management,
26 establishment, or carrying on of any criminal activity, or
27 (2) knowing that the monetary instrument represents
28 the proceeds of, or is derived directly or indirectly from
29 the proceeds of, criminal activity, is guilty of the crime of
30 money laundering. The 30-day aggregation period does
31 not create an obligation for financial institutions to
32 record, report, create, or implement tracking systems, or
33 otherwise monitor transactions involving monetary
34 instruments in any 30-day time period or other time
35 period. In consideration of the constitutional right to
36 counsel afforded by the Sixth Amendment to the United
37 States Constitution and Section 15 of Article 1 of the
38 California Constitution, when a case involves an attorney
39 who accepts a fee for representing a client in a criminal
40 investigation or proceeding, the prosecution shall

1 additionally be required to prove that the monetary
2 instrument was accepted by the attorney with the intent
3 to disguise or aid in disguising the source of the funds or
4 the nature of the criminal activity.

5 A violation of this section shall be punished by
6 imprisonment in the county jail for not more than one
7 year or in the state prison, by a fine of not more than two
8 hundred fifty thousand dollars (\$250,000) or twice the
9 value of the property transacted, whichever is greater, or
10 by both that imprisonment and fine. However, for a
11 second or subsequent conviction for a violation of this
12 section, the maximum fine that may be imposed is five
13 hundred thousand dollars (\$500,000) or five times the
14 value of the property transacted, whichever is greater.

15 (b) Notwithstanding any other law, for purposes of
16 this section, each individual transaction conducted in
17 excess of five thousand dollars (\$5,000), or each series of
18 transactions conducted within a 30-day period that total
19 in excess of five thousand dollars (\$5,000), shall constitute
20 a separate, punishable offense.

21 (c) (1) Any person who is punished under subdivision
22 (a) by imprisonment in the state prison shall also be
23 subject to an additional term of imprisonment in the state
24 prison as follows:

25 (A) If the value of the transaction or transactions
26 exceeds fifty thousand dollars (\$50,000) but is less than
27 one hundred fifty thousand dollars (\$150,000), the court,
28 in addition to and consecutive to the felony punishment
29 otherwise imposed pursuant to this section, shall impose
30 an additional term of imprisonment of one year.

31 (B) If the value of the transaction or transactions
32 exceeds one hundred fifty thousand dollars (\$150,000)
33 but is less than one million dollars (\$1,000,000), the court,
34 in addition to and consecutive to the felony punishment
35 otherwise imposed pursuant to this section, shall impose
36 an additional term of imprisonment of two years.

37 (C) If the value of the transaction or transactions
38 exceeds one million dollars (\$1,000,000), but is less than
39 two million five hundred thousand dollars (\$2,500,000),
40 the court, in addition to and consecutive to the felony

1 punishment otherwise imposed pursuant to this section,
2 shall impose an additional term of imprisonment of three
3 years.

4 (D) If the value of the transaction or transactions
5 exceeds two million five hundred thousand dollars
6 (\$2,500,000), the court, in addition to and consecutive to
7 the felony punishment otherwise prescribed by this
8 section, shall impose an additional term of imprisonment
9 of four years.

10 (2) (A) An additional term of imprisonment as
11 provided for in this subdivision shall not be imposed
12 unless the facts of a transaction or transactions, or
13 attempted transaction or transactions, of a value
14 described in paragraph (1), are charged in the accusatory
15 pleading, and are either admitted to by the defendant or
16 are found to be true by the trier of fact.

17 (B) An additional term of imprisonment as provided
18 for in this subdivision may be imposed with respect to an
19 accusatory pleading charging multiple violations of this
20 section, regardless of whether any single violation
21 charged in that pleading involves a transaction or
22 attempted transaction of a value covered by paragraph
23 (1), if the violations charged in that pleading arise from
24 a common scheme or plan and the aggregate value of the
25 alleged transactions or attempted transactions is of a
26 value covered by paragraph (1).

27 (d) All pleadings under this section shall remain
28 subject to the rules of joinder and severance stated in
29 Section 954.

30 *(e) A felony conviction under this section shall not*
31 *constitute a current felony conviction for purposes of*
32 *subdivisions (b) to (i), inclusive, of Section 667 or Section*
33 *1170.12.*

34 SEC. 4. Section 14165 of the Penal Code is amended
35 to read:

36 14165. (a) The department shall analyze the reports
37 required by Section 14162 and shall report any possible
38 violations indicated by this analysis to the appropriate
39 criminal justice agency.

1 (b) The department, in the discretion of the Attorney
2 General, may make a report or information contained in
3 a report filed under Section 14162 available to a district
4 attorney or a deputy district attorney in this state, upon
5 request made by the district attorney or his or her
6 designee. The report or information shall be available
7 only for a purpose consistent with this title and subject to
8 regulations prescribed by the Attorney General, which
9 shall require the district attorney or his or her designee
10 seeking the report or information contained in the report
11 to specify in writing the specific reasons for believing that
12 a provision of this title or Section 186.10 has been violated.

13 (c) The department shall destroy a report filed with it
14 under Section 14162 at the end of the fifth calendar year
15 after receipt of the report, unless the report or
16 information contained in the report is known by the
17 department to be the subject of an existing criminal
18 proceeding or investigation.

19 SEC. 5. Section 14167 of the Penal Code is amended
20 to read:

21 14167. Any report, record, information, analysis, or
22 request obtained by the department or any agency
23 pursuant to this title is not a public record as defined in
24 Section 6252 of the Government Code and is not subject
25 to disclosure under Section 6253 of the Government
26 Code.

27 SEC. 6. No reimbursement is required by this act
28 pursuant to Section 6 of Article XIII B of the California
29 Constitution because the only costs that may be incurred
30 by a local agency or school district will be incurred
31 because this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition
35 of a crime within the meaning of Section 6 of Article
36 XIII B of the California Constitution.

37 Notwithstanding Section 17580 of the Government
38 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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